

REMARKS

Claims 1-14, 16-28, 30-32, 43-46 and 48-49 stand rejected under 35 U.S.C. § 102(b) as anticipated by PCT Publication WO 99/49826 to Chmielewski ("Chmielewski"). This ground of rejection is respectfully traversed.

The Examiner states that Chmielewski discloses an absorbent article (10) comprising a topsheet (30), a backsheet (32) and an absorbent core (32). The Examiner acknowledges that Chmielewski does not disclose an absorbent core with a thermal resistance (clo) of less than about 1.7 watts/m². However, the Examiner contends that since the reference uses the same structure and materials to form the absorbent core as do applicants, this property is an inherent feature of the core of the reference.

Applicants maintain that the thermal resistance of the core is an important functional feature of the core structure of the present invention. As stated in the present specification, the improved thermal transmittance of the core structure of the present invention is due, in part, to the reduced thickness of the core and the low density materials used to construct the core. See page 12 of the specification. The low density, low basis weight cores of the present invention are structural features now recited in the pending claims. Accordingly, the present claims now include both the functional and structural features necessary to provide adequate thermal transmittance as claimed. See page 14 of the specification.

Notwithstanding, applicants position is that the functional limitations in the present claims regarding thermal transmittance distinguish the invention over the prior art absorbent article. See, in this regard, *In re Land*, 368 F.2d 866, 151 USPQ 621 (CCPA 1966), wherein the CCPA noted that although portions of a claim may be functional, nevertheless the claim is patentable over the prior art in view of the functional limitations. See also *In Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 20 U.S.P.Q.2d 1746 (Fed. Cir. 1991), where the court held that inherency may not be established by probabilities or possibilities.

In contrast to conventional absorbent articles, applicants have invented an absorbent article with a greater thermal transmittance, thereby allowing body heat to be more rapidly transmitted to the environment, providing a greater comfort to the user.

This characteristic is neither taught nor suggested by the Chmielewski reference.

Claims 15 and 33 have also been rejected under 35 U.S.C. 103(a) as being obvious over Chmielewski in view of Jackson (U.S. Patent No. 5,350,370). This ground of rejection is traversed.

Claims 15 and 33, directed to the basis weight of the core, have now been canceled, and these features have been inserted in the independent claims as discussed above. The Examiner states that it would be obvious to combine Jackson with Chmielewski to arrive at the core structures of the present invention, i.e. those having basis weights within the claimed ranges. Applicants strongly disagree.

The Examiner asserts that Jackson discloses core structures having basis weights of from 100 to 1000 gsm, and that this range would overlap with the range claimed in the present invention. Notwithstanding, Jackson contains no disclosure pertinent to the thermal transmittance properties of the core structure. Accordingly, there is no basis in the Jackson reference to optimize the core basis weights to arrive at the levels of thermal transmittance claimed in the present application. Therefore, one skilled in the art would not be motivated to combine the references as asserted in the Official Action.

In view of the aforementioned facts and reasons, the present application is now believed to overcome the remaining rejections in this application, and to be in proper condition for allowance. Entry of the foregoing amendment, at this time is appropriate since no further review or search is required. Accordingly, reconsideration and withdrawal of the rejections, is respectfully solicited. The Examiner is invited to contact the undersigned at the telephone number listed below to discuss any matter pertaining to the status of this application.

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Respectfully submitted,

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